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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,932	07/03/2003	Klaus Abraham-Fuchs	32860-000543/US	3965

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EXAMINER

MUSSELMAN, TIMOTHY A

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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07/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/611,932	Applicant(s) ABRAHAM-FUCHS ET AL.	
	Examiner Timothy Musselman	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14,16-24,26-28,30,31 and 33-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-14,16-24,26-28,30,31 and 33-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33-34 are rejected under 35 U.S.C. 112, 2nd paragraph, for being indefinite. The claims depend from a cancelled claim, and as such examination of these claims is not possible.

Claim Rejections - 35 USC § 103

The following is a quotation of the relevant portion of 35 U.S.C. 103 that forms the basis for the rejections made in this section of the office action;

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Claims 1, 3-4, 6-14, 16-24, 26-28, 30-31, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goknar (US 6,120,440) in view of Joao (US 5,961,332).

Regarding claims 1, 13-14, 26, and 36-37, Goknar discloses a system for providing support when selecting a training program as part of therapy planning, comprising providing a capability profile for a patient and storing it in a database. See col. 2: 47-62. Goknar further discloses a first database containing measured past capability profiles for automatic comparative purposes against the current patient. See col. 10: 32-36. Goknar further discloses selecting and displaying a suitable treatment program based upon similarity of the measured data in the patients profile to the measured data in the past capability profiles. See col. 2: 43-66, col. 7: 20-35, and col. 10: 32-37. Note that the second citation (col. 7: 20-35) is

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describing steps c-f of the first citation (col. 2: 43-66). That is to say that the comparison described in the second citation is working toward the goal of selecting a treatment option, thus the selected treatment option is at least in part based on the comparison. Goknar fails to explicitly teach wherein the treatment program is selected based upon values of *success of the treatment plans* assigned to the past patients with similar profiles, and indeed fails to teach of providing values pertaining to the success of treatment programs in the profiles at all. Goknar also fails to teach of displaying the values of success. However, Joao discloses a system for compiling patient data that teaches of storing treatment results for research and comparative purposes. See col. 2: 41-61. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the treatment results as taught by Joao as one of the measured parameters in the system of Goknar, as an additional tool utilized in the selection and display of the treatment program, so as to provide more data to the system so that it makes a better selection of a treatment program.

Regarding claims 3-4, 16-17, 27-28, and 30-31, Goknar/Joao disclose displaying a treatment plan with measured values of success as described with respect to parent claims 1 and 13 as described above. However, although Goknar discloses *selecting* from a plurality of treatment options based on similarity to past profiles (see col. 9: 13-15) there is no teaching of *displaying* a plurality of treatment options, or any teaching as to the manner in which the items are sorted on the display. However, Joao teaches of generating reports pertaining to treatment options that displays pluralities of data items. See col. 8: 54-64. It would have been obvious to one of ordinary skill in the art to display multiple items as taught by Joao in the treatment option display of Goknar, so as to provide the user with choices. As for displaying the treatment options based upon the measured value of success or the degrees of similarity, it is noted that programs capable of displaying items sorted in numerical or other various orders are extremely old and well known in the art. These are generic feature of hundreds of computer programs that display data. One of many such examples is Microsoft Excel, created for Windows in 1987 (see Wikipedia article titled "Microsoft Office Excel"). Like many other programs, Excel allows users to sort data pertaining to various data fields. Examiner takes OFFICIAL NOTICE that sorting items in various manners for display is

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extremely old and well known in the art, and that it would have been obvious to one of ordinary skill in the art at the time of the invention to sort the treatment options based upon measured values of success or measured values of similarity, so that the first option the user sees will be the most relevant pertaining to whatever parameter the user wishes to use to sort the data.

Regarding claim 6 and 18, Goknar further discloses wherein prescribable rules are used to select the optimum and display the optimum training result for the patient. See col. 2: 61-65. Note that the use of measured values for the success of treatment plans is an obvious variation of Goknar in view of Joao as described above with respect to claim 1.

Regarding claims 7 and 20, Goknar further discloses wherein data representative of at least one of a proposed and displayed training program are modifiable by a user. See col. 10: 1-6.

Regarding claims 8 and 19, Goknar further discloses wherein the selection of the treatment option involves a match between further patient data for the patient and patient data for the comparative patients being checked and taken into account. See the rejection of claim 1 above.

Regarding claims 9 and 22, Goknar further discloses wherein the patients further data is input retrieved from an electronic patient record. See col. 9: 13-20.

Regarding claims 10 and 21, Goknar discloses repeatedly providing a current capability profile for the patient in the course of therapy, and selecting at least one further program to replace and modify and modify the existing treatment plan. See col. 8: 36-58. The remaining features of claim 10 are rejected as described above with respect to claims 1 and 4.

Regarding claims 11 and 24, Goknar/Joao disclose evaluating and displaying treatment options based on differing outcome results as described above with respect claim 11. However, in the system as

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described in claim 11, there is no teaching of *displaying* the data pertaining to the *differences* between the treatment plans (i.e. transfer data), and no teaching of a third database. However, Joao further discloses displaying various statistical data pertaining to various treatment plans, and additionally discloses utilizing multiple databases in a system for evaluating treatment plans. See col. 9: 1-10 and col. 3: 45-50. It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the displaying of various data pertaining to comparative treatment plans and the multiple databases of Joao, in the system of Goknar/Joao, in order to clearly illustrate the differences between the current plan and the plan the patient is transitioning to. The inclusion of multiple databases would have been obvious so as to provide an orderly means to organize data.

Regarding claims 12 and 25, Goknar further discloses wherein the database contains anonymized data. See col. 8: 10-20. Note that the use of 'average responses' implies prior data with no specific corresponding patient profile.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goknar (US 6,120,440) in view of Joao (US 5,961,332) and in further view of Luciano (US 6,063,028).

Regarding claim 5, Goknar/Joao disclose all of the features of parent claim 1 as described above with respect to claim 1, including the display of treatment options with the measured value of the likelihood of success. Goknar further discloses wherein data representative of only the best treatment option is displayed. See col. 2: 64-65. There is no teaching wherein the data must be above a threshold. However, Luciano discloses a treatment plan selection program that includes utilizing thresholds to determine the relevance of data. See col. 46: 38-43. It would have been obvious to one of ordinary skill in the art to utilize the threshold aspects of Luciano with the data of Goknar/Joao, in order to eliminate irrelevant data from being displayed.

Response to Arguments

The replacement oath/declaration submitted 9/18/2006 has been accepted. Applicants arguments dated 9/18/2006 have been fully considered. Applicant argues that the system of Goknar evaluates different patient categories using different evaluation scales than the instant application. Examiner notes, however, that the instant application does not claim *any* specific categories or *any* specific evaluation scales, and as such this argument is moot and will not be considered further. Further arguments are moot in view of the new grounds of rejection. This action is made NON-FINAL.

Conclusion

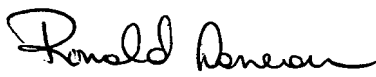
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Musselman whose telephone number is (571)272-1814. The examiner can normally be reached on Mon-Thu 6:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Ronald Laneau
Supervisory Patent Examiner
Art Unit 3714

7/23/07